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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,301	10/15/2003	Paul R. Erickson	05918-342001	8854
26161	7590	07/06/2005	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			RODRIGUEZ, RUTH C	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/688,301	<b>Applicant(s)</b> ERICKSON ET AL.	
	<b>Examiner</b> Ruth C Rodriguez	<b>Art Unit</b> 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-78 is/are pending in the application.
- 4a) Of the above claim(s) 56-78 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 31-54 is/are rejected.
- 7) ☐ Claim(s) 30 and 55 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/31/03 &amp; 3/14/05</u>  | 6) <input type="checkbox"/> Other: _____                                    |

*nc*

*AS*

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-55, drawn to a touch fastener, classified in class 24, subclass 452.

II. Claims 56-78, drawn to a process of forming a touch fastener, classified in class 264, subclass 167.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, a materially different process can be used to make the touch fastener.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

2. During a telephone conversation with James W. Babineau on 22 June 2005 a provisional election was made with traverse to prosecute the invention of I, claims 1-55. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 56-78 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

3. The disclosure is objected to because of the following informalities: Page 7, line 24, the underlined space between "number" and ", the" should be replaced with --10/688,031--. Correction is required.

### ***Claim Objections***

4. Claim 8 is objected to because of the following informalities: Claim 8 contain terms that are written within parenthesis. It is unclear whether these claims are intended to have these limitations are part of the claims or not. The parenthesis should be removed if the terms are to be included as part of the claims. Otherwise, the terms should be eliminated from the claims. Correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

6. Claims 1-3, 11, 12, 17, 31-33, 41 and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Kennedy et al. (US 5,260,015 B1).

A strip-form touch fastener component comprises a resin base (20) and a reinforcement fabric (23,27). The resin base has a front surface and an array of fastener elements (21) project from the front surface. Each fastener element has a stem extending contiguously from the front surface of the base and formed of resin forming at least a portion of the base and a head disposed on the stem above the base and forming an overhang for releasably engaging fibrous loops (Fig. 5 and 8). The reinforcing fabric is on a side of the resin base opposite the fastener elements (Figs. 5 and 8). The fabric comprises two distinct layers of yarns including an anchor layer and outer layer (Base of reinforcing fabric and the loops). The anchor layer faces the resin base and comprises ~~filaments embedded within resin of the base to anchor the fabric to~~ the base (Figs. 5 and 8). The outer layer comprising float filament sections extending generally along an outer surface of a back side of the fastener component such sections connected to the back side of the fastener component only at their ends and otherwise lying against the back side of the fastener component (Figs. 5 and 8).

The float filament sections extend generally straight between their connected ends (Figs. 5 and 8).

The float filament sections are substantially free of resin of the base between their ends (Figs. 5 and 8).

The float filament sections are sections of filaments of multifilament yarns of the reinforcing fabric (C. 9, L. 65-68 and C. 10, L. 1-15)

The float filament sections extend in a direction generally across the strip-form fastener component (Figs. 5 and 8).

The reinforcing fabric is a knit fabric and the knit fabric defines a technical face and a technical back (C. 9, L. 65-68, C. 10, L. 1-15 and Figs. 5 and 8).

A strip-form touch fastener component comprises a resin base (20) and reinforcing fabric (23,27). The resin base has a front surface and an array of fastener elements (21) project from the front surface. Each fastener element has a stem extending contiguously from the front surface of the base and formed of resin forming at least a portion of the base and a head disposed on the stem above the base and forming an overhang for releasably engaging fibrous loops (Figs. 5 and 8). The reinforcing fabric directly laminated to a side of the resin base opposite the fastener elements (Figs. 6 and 8). ~~The fabric comprises a knit material with float filament sections extending generally~~  
along an outer surface of a back side of the fastener component such sections connected to the back side of the fastener component only at their ends, and otherwise lying against the back side of the fastener component (C. 9, L. 65-68 and C. 10, L. 1-15).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4-10, 13-16, 18-29, 34-40 and 43-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy

Kennedy discloses a touch fastener having all the features listed above in paragraph 5 for the rejection of claims 1 and 31. Kennedy fails to provide any dimensions of the float filament sections. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the float filament sections extend no more than about 0.3 millimeter from a back surface of the resin base, the float filament sections are at least about 0.03 millimeter from the back surface of the resin base, the float filament sections extend about 0.15 millimeter from the back surface of the resin base, the float filament sections have an average float length of at least about two millimeters, the average float length is between about 2 and 10 millimeters, an average float length of the float filament sections is more than about 10 times as long as a nominal distance the float filament sections extend from a back surface of the resin base, or the float filament sections are arranged in a pattern of at least about 150 float filament sections per square centimeter of the back side of the fastener component for the touch fastener disclosed by Kennedy since such a change is considered a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Especially since it is well known in the art at the time the invention was made to change the dimensions of the different elements in order to reinforce the touch fastener in accordance with the application where it is being used.

The yarns can be multifilament yarns because the Examiner takes Official Notice that knit fabrics with loops are commonly made with multifilament yarns. Additionally, these knit fabrics have each yarn contains from 10 to 13 discrete filaments, the yarns are between about 20 and 170 denier and each yarn filament is between about 2 and 40 denier, the technical face can face the resin base with the technical back providing the float filament sections, the technical back is in an unnapped condition and the fabric can comprises between about 20 and 60 courses per inch or between about 47 and 55 courses per inch or between about 15 and 60 wales per inch or between about 32 and 38 wales per inch.

The reinforcing fabric is a warp knit fabric (C. 9, L. 65-68 and C. 10, L. 1-15).

The fabric can be stabilized in a post-knit, cross-wale stretch condition C, 9, L. 65-68 and C. 10, L. 1-15.

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### ***Allowable Subject Matter***

9. Claims 30 and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.



The other references relevant to the invention since they show the state of the art of touch fasteners having some of the features being claimed by the current application are cited in form PTO 892- Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase the patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as PTO's mailroom processing and delivery time. For a complete list of correspondence **not** permitted by facsimile transmission, see MPEP § 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee that the applicant is paying by check **should not be** submitted by facsimile transmission separately from the check.

I hereby certify that this correspondence is being facsimile transmitted to  
the Patent and Trademark Office (Fax No. (703) 872-9306) on            (Date).

(Signature)


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

  
Ruth C. Rodriguez  
Patent Examiner  
Art Unit 3677

rcr

June 27, 2005

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